

Decision DRAFT DECISION OF ALJ O'DONNELL (Mailed 2/22/2005)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Altrio Communications, Inc. for a Certificate of Public Convenience and Necessity to Provide Facilities Based Competitive Local Exchange and IntraLATA Service in Arcadia, Sierra Madre, Monrovia and Certain Parts of Los Angeles County CA (Altadena, Kinneloa, Chapman Woods, La Cresenta/Montrose and South Monrovia Unincorporated Areas).

Application 03-12-005
(Filed December 2, 2003)

**OPINION DISMISSING APPLICATION FOR
FAILURE TO PROSECUTE**

I. Summary

Altrio Communications, Inc. (Applicant) filed this application for a certificate of public convenience and necessity under Pub. Util. Code § 1001 for authority to provide full facilities-based local exchange and interexchange telecommunications services in Arcadia, Sierra Madre, Monrovia and certain parts of Los Angeles County. Applicant was previously authorized to provide limited facilities-based and resold local exchange and interexchange services, as well as full facilities-based local exchange services in the City of Pasadena. By this decision, we dismiss the application for failure to prosecute.

II. Discussion

In connection with this application, the Commission's Telecommunications Division attempted to contact Applicant regarding the

payment of fees and surcharges, and the filing of reports, but could not obtain a response. On January 6, 2005, the assigned Administrative Law Judge (ALJ) issued a ruling that required Applicant to indicate whether it wanted to pursue the application. Applicant was ordered to respond by January 12, 2005. No response was filed. This application cannot be left open indefinitely. Applicant has been given a full opportunity to pursue this matter and has not done so. Therefore, the application shall be dismissed for failure to prosecute. This order will be made effective immediately in order to clear this application from the Commission's list of active proceedings.

III. Comments on Draft Decision

The draft decision of ALJ Jeffrey P. O'Donnell in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Commission's Rules of Practice and Procedure. No comments were filed.

IV. Categorization and Need for Hearings

In Resolution ALJ 176-3125, dated December 18, 2003, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. Applicant has failed to prosecute this application. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

V. Request to File Under Seal

Applicant requested that the financial information filed with this application be filed under seal. The financial information consists of Applicant's financial statements. Applicant represented that the information was proprietary and sensitive. Since Applicant has not responded to the January 6, 2005 ALJ ruling, it appears that Applicant is no longer in business. In addition, this

application has been pending for over a year, and we normally do not grant confidential treatment for more than two years. Therefore, we will deny the request.

VI. Assignment of Proceeding

Susan P. Kennedy is the Assigned Commissioner and Jeffrey P. O'Donnell is the assigned ALJ in this proceeding.

Findings of Fact

1. Applicant failed to respond to the ALJ's January 6, 2005 ruling.
2. The application cannot be left open indefinitely.
3. Applicant has failed to prosecute the application.
4. Applicant is no longer in business.

Conclusions of Law

1. The application should be dismissed.
2. No protests have been received.
3. A public hearing is not necessary.
4. This order should be made effective immediately in order to clear this application from the Commission's list of active proceedings.
5. Applicant's request to file its financial information under seal should be denied.

O R D E R

IT IS ORDERED that:

1. Application 03-12-005 is dismissed.

2. The applicant's request to have the financial information filed with this application kept under seal is denied.

3. A.03-12-005 is closed.

This order is effective today.

Dated _____, at San Francisco, California.